

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID ANGEL SIFUENTES, III,

Plaintiff,

v.

ADOBE,

Defendant.

CASE No. 1:23-cv-842

HON. ROBERT J. JONKER

**ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION**

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The matter is before the Court on Magistrate Judge Green’s Report and Recommendation (ECF No. 26) and Plaintiff’s Objection to the Report and Recommendation. (ECF No. 27). Also pending are a number of motions filed by Plaintiff, which the Court considers as part of Plaintiff’s objections. Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, “[t]he district judge . . . has a duty to reject the magistrate judge’s recommendation unless, on de novo reconsideration, he or she finds it justified.” 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge’s disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Plaintiff's objections. After its review, the Court finds the Magistrate Judge's Report and Recommendation is factually sound and legally correct.

The Magistrate Judge recommends granting Defendant's motion to vacate the October 12, 2023, Default that was entered in this case. In particular, the Magistrate Judge concludes that the three pertinent factors all augur in favor of setting aside the default. The Magistrate Judge carefully and thoroughly considered the record and the governing law. The Magistrate Judge properly analyzed the law surrounding default. Nothing in Plaintiff's objections changes the fundamental analysis. The Court agrees the defense motion should be granted, for the very reasons articulated by the Magistrate Judge.

In further filings, Plaintiff challenges the Court's September 20, 2023, Order referring to this matter to the magistrate judge. Plaintiff contends the Court was unauthorized to enter the order of reference absent the consent of the parties. Plaintiff cites to 28 U.S.C. § 636(c) in support of this assertion. But the Court did not refer the matter to the magistrate judge under this provision. Rather the reference was under Section 636(b)(1)(A), (B), which authorizes a magistrate judge to issue reports and recommendations on dispositive motions subject to de novo review by a district judge following objections. (ECF No. 7). To the extent Plaintiff challenges that provision, courts have upheld the delegation of judicial powers under this statute. *See Hinman v. McCarthy*, 676 F.2d 343, 346 (9th Cir. 1982) (upholding challenge to provision in a habeas proceeding).

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (ECF No. 26) is **APPROVED AND ADOPTED** as the opinion of the Court.

IT IS FURTHER ORDERED that Defendant's Motion to Vacate (ECF No. 21) is **GRANTED** and the October 12, 2023, default in this matter is **SET ASIDE**.

IT IS FURTHER ORDERED that Plaintiff's Motions to Default Judgment and Motions to Expedite (ECF Nos. 12, 19, and 32) are **DISMISSED AS MOOT**.

IT IS FURTHER ORDERED that Plaintiff's Motion to Vacate and Amended Motion to Vacate (ECF Nos. 29, 30) are **DENIED**. The Court reaffirms the September 20, 2023, Order of Reference (ECF No. 7).

Dated: July 16, 2024

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE